



**U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

DATE PREPARED 4-23-85

RE: EUGENE PALOMBO, CASE NO. 85-TLC-4

DECISION AND ORDER

THIS PROCEEDING WAS INITIATED BY THE ABOVE-NAMED EMPLOYER WHO REQUESTED ADMINISTRATIVE-JUDICIAL REVIEW, PURSUANT TO 20 C.F.R. §655.204(d), OF THE DETERMINATION OF A U.S. DEPARTMENT OF LABOR REGIONAL ADMINISTRATOR DENYING AN APPLICATION FOR LABOR CERTIFICATION. THE APPLICATION WAS SUBMITTED BY THE EMPLOYER ON BEHALF OF FORTY (40) UNNAMED ALIENS PURSUANT TO SECTION 212(a)(14) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. §1182(a)(14) (HEREINAFTER, THE ACT).

ON APRIL 10, 1985, THE REGIONAL ADMINISTRATOR DENIED EMPLOYER'S APPLICATION FOR TEMPORARY ALIEN LABOR CERTIFICATION BECAUSE EMPLOYER FAILED TO COMPLY WITH THE SPECIFIED TIME REQUIREMENTS OF 20 C.F.R. §656.203. THE REGIONAL ADMINISTRATOR SPECIFICALLY INDICATED THAT EMPLOYER WAS REQUIRED TO NOTIFY HIM OF THE RESULTS OF THE RECRUITMENT ACTIVITIES IN WRITING BY APRIL 5, 1985. THIS WAS NECESSARY IN ORDER FOR THE REGIONAL ADMINISTRATOR TO ISSUE A FINAL DETERMINATION BY APRIL 10, 1985 AS REQUIRED BY 20 C.F.R. §656.206.

ON APPEAL EMPLOYER CONTENDS THAT "BECAUSE OF OUTSTANDING STAY IN THE HOSPITAL FROM APRIL 2, 1985 to APRIL 5, 1985, I AM REQUESTING YOUR RECONSIDERING MY REQUEST FOR CERTIFICATION FOR ALIEN WORKERS". (AF-1).

DISCUSSION

SECTION §655.206(A) REQUIRES THE REGIONAL ADMINISTRATOR TO GRANT TEMPORARY LABOR CERTIFICATION BY THE 60th DAY OF THE RECRUITMENT PERIOD OR 20 DAYS BEFORE THE DATE OF NEED SPECIFIED IN THE APPLICATION, WHICHEVER IS LATER. IN THIS CASE, SINCE THE RECRUITMENT PERIOD BEGAN ON FEBRUARY 11, 1985 AND THE DATE THE

ALIENS WERE TO BEGIN WORK IS MAY 1, 1985, THE LATER DATE IS THE 60th DAY OF THE RECRUITMENT THE 60th DAY IS APRIL 11, 1985. : PERIOD. THEREFORE, APRIL 5, 1985 IS NOT FIVE DAYS BEFORE THE DATE THE REGIONAL ADMINISTRATOR IS REQUIRED TO MAKE A CERTIFICATION DETERMINATION. APRIL 6, 1985 WOULD BE THE APPROPRIATE DATE. NEVERTHELESS, EMPLOYER'S LETTER WAS NOT RECEIVED BY THE EMPLOYMENT AND TRAINING ADMINISTRATION UNTIL APRIL 9, 1985, THEREFORE, IT WAS SUBMITTED LATE. EMPLOYER'S ALLEGATION OF HOSPITALIZATION FROM APRIL 2, 1985 TO APRIL 5, 1985 IS UNSUPPORTED. MOREOVER, EMPLOYER WAS AWARE OF THE APRIL 5, 1985 DEADLINE IN EARLY MARCH AS INDICATED BY THE REGIONAL ADMINISTRATOR'S LETTER OF MARCH 6, 1985 (AF-7).

EVEN IF EMPLOYER'S REPORT ON RECRUITMENT WERE TIMELY FILED, I FIND EMPLOYER FAILED TO COMPLY WITH I SECTION 655.203. EMPLOYER'S LATE RESPONSE DOES NOT ESTABLISH THAT HE CONTACTED THE CREW LEADERS OR FORMER EMPLOYEES AS REQUIRED BY THE REGULATIONS.

ORDER

THE DETERMINATION OF THE CERTIFYING OFFICER DENYING THE EMPLOYER'S APPLICATION FOR LABOR CERTIFICATION IS AFFIRMED.

EVERETTE E. THOMAS
DEPUTY CHIEF JUDGE

DATED:
WASHINGTON, D.C.
EET/dew